made by the testator to the son. *Held*, that the offer of proof be refused and the note deducted in full. *Pierce* v. *Loomis*, 224 Mass. 226, 112 N. E. 1027.

The primary purpose in construing a will is to carry out the testator's intention, and when the latter is clearly expressed in the instrument its terms must be adhered to. Thus, where a testator provides that a specific sum or obligation be deducted from a legacy, the amount stated cannot be disputed although erroneous. *In re Wood*, 32 Ch. D. 517; *Dunshee* v. *Dunshee*, 243 Pa. St. 599, 90 Atl. 362. Similarly, although the specific obligation due from the legatee has become unenforceable, the expressed intent must prevail. *In re Fussell's Estate*, 129 Ia. 498, 105 N. W. 503. Even where the set-off clause is general, the same result is reached, if the obligation is merely unenforceable, as when barred by the Statute of Limitations. *In re Gillingham's Estate*, 220 Pa. St. 353, 69 Atl. 809. *Cf. Stephenson* v. *Norris*, 128 Wis. 242, 260, 107 N. W. 343, 349. But *cf. Golds* v. *Greenfield*, 2 Sm. & G. 476. But an extinguished claim is usually not within the terms of a general set-off clause. *Howe* v. *Howe*, 184 Mass. 34, 67 N. E. 639. Thus in the principal case it is difficult to see how an extinguished note can fall within the terms of the will as one held in trust at the testator's decease. Moreover, the testator must have received substantial satisfaction in the merger of the mortgage and equity of redemption. In those cases where the deduction was made, the unenforceable obligation had never been satisfied, and the testators usually intended the distribution of their entire property in desired proportions. See *Sibley* v. *Maxwell*, 203 Mass. 94, 103, 89 N. E. 232, 234. But where satisfaction has been had, a deduction destroys this desired equality and results in a contrary inequality. *Aster* v. *Ralston*, 179 Ill. App. 194; *Musselman's Estate*, 5 Watts (Pa.) 9. Even where the set-off clause was specific, the deduction has been lessened by whatever amount had actually been received by the testator. *Sibley* v. *Maxwell*, *supra*. Furthermore, if the note in question represents the only large payment ever made by the testator, the inference from the will seems inevitable that he did not intend this note to be deducted.

BOOK REVIEWS

A HISTORY OF CONTINENTAL CRIMINAL LAW. By Carl Ludwig von Bar and others. Volume V of the Continental Legal History Series, published under the auspices of the Association of American Law Schools. Boston: Little, Brown and Company. 1916. pp. 561.

This volume is part of the series through which the Association of American Law Schools seeks to put before the public, and particularly the legal profession, the best results of modern juristic thought upon the history and development of Continental European law. The plan followed in this volume has been to take the book of Von Bar, "Geschichte des deutschen Strafrechts und der Strafrechtstheorien," as the basis of the volume. As that work, however, related only to German law, and as it was desired to include as many as possible of the Continental countries in this volume, Von Bar's work has been supplemented by inserting selections from other writers on the history of criminal law in European countries other than Germany. Substantially all European countries of any importance are included, with the exceptions of Italy, Spain, Portugal, and Russia. For Italian law the editors refer to Volume VIII of the series, by Professor Calisse. In the case of Spain and Portugal the omission is explained on the ground that they have not been able to find any suitable account existing. For the omission of Russia no reason is given, and the name of Russia does not even appear in the index. It would certainly seem as though in any volume designed to cover the history of Continental criminal law an omission

of so large a state as Russia could hardly be justified; certainly not without some explanation making the reason for it clear. It would be ungrateful, however, to complain that everything has not been done, when the Association has done so much.

By this publication a great service has been rendered to legal thought in this country. The time is rapidly approaching when our existing American criminal law must inevitably undergo an extensive revision, not only to meet the social changes which have taken place since it acquired its original form, but also to meet the changed theories of the relation of the law and state to the criminal population. In such a revision a knowledge of what has been thought and done in countries other than our own, yet with civilizations and problems not unlike our own, cannot wisely be disregarded. This volume opens to future legislators and jurists the door of a vast treasure house of experience and theory.

Its arrangement is clear, the indexing good, and the translation, so far as can be judged without a careful comparison with the original writers, an excellent piece of work. ARTHUR D. HILL.

A TREATISE ON THE RESCISSION OF CONTRACTS AND CANCELLATION OF WRITTEN INSTRUMENTS. By Henry Campbell Black. Two volumes. Kansas City: Vernon Law Book Co. 1916.

If law is a science, law books ought to be written like treatises in other sciences — economics, politics, education — and not like the *magnum opus* of the clergymen in "The Way of All Flesh": "After breakfast he retires to his study; he cuts little bits out of the Bible and gums them with exquisite neatness by the side of other little bits." We have a similar atomic theory of law books, except that the atom instead of being a Scriptural verse is the headnote. Headnotes arranged vertically make a digest. Headnotes arranged horizontally make a textbook. Textbooks arranged alphabetically make an encyclopedia. Every few years some investigator has to disintegrate one of these works into its constituent atoms, add some more headnotes from recent decisions, stir well, and give us the latest book on the subject. And so law libraries grow.

But the law does not thus grow. Or, at least, it grows only by the accretion of new decisions which increase the existing confusion. While a collection of holdings from one jurisdiction does at least serve to indicate the law of that jurisdiction, a mass of authorities from fifty states establishes *per se* no law whatever. The only value of such cases, outside of their own state, is to furnish reasons for the doctrine held by them, and if the reasons are left out of the textbook, we have only a list of citations to serve as a starting point for true investigation by somebody else.

What we need to promote true growth in the law is a textbook which will discuss and endeavor to solve the problems in human life and social adjustment presented by a particular branch of law. What we get is too often a tremendous conglomeration of sets of facts, more or less well arranged under headings, with a moderate amount of comment by way of introduction. Undoubtedly decided cases are a very valuable aid in the solution of legal problems, but they are only a means to that end; and there are other means, which are usually ignored.

In the scientific legal treatise for which we hope, the indispensable task of gathering decisions seems only a first step. The second step would be a classification of the reasons for and against proposed methods of handling a given situation,[1] and the text-writer would draw these reasons, not only from judicial

[1] For an illustration of this method as applied to a political problem, see the discussion of the referendum in W. B. MUNRO, GOVERNMENT OF AMERICAN CITIES, p. 334.